Mich. 389. The principal case is of peculiar interest in that it shows the limits within which newspaper writers are allowed to exercise their humor—though such limits are elastic in different courts.

LOTTERY—'CHANCE'.—PEOPLE EX REL. ELLISON V. LAVIN, 71 N. E. 753. (N. Y.).—Where a penal code defines a lottery as a scheme for the distribution of property by chance among persons who have paid a valuable consideration therefor, *held*, that an estimate on the amount of taxes to be paid on all cigars in a given month is necessarily so uncertain as to come within the term 'chance'.

In the absence of statutory or code provisions a lottery must contain the element of pure chance. *People v. Elliott*, 41 N. W. 916. But it is generally provided, or at least held that any scheme or game in which judgment, skill, practice or brains may be thwarted by chance, is a lottery. *State v. Nates*, 3 Hill L. 200; *Harris v. White*, 181 N. Y. 532. So that most of the cases go beyond the decision in the principal case, in that, while this decision merely requires that chance be the dominating element, they hold that schemes or games in which the result is determined more by skill than chance are nevertheless lotteries. *State v. Lovell*, 39 N. J. L. 458; *Swigart v. People*, 154 Ill. 284. In some cases stakes at horse-races are held to be lotteries. *Davis v. State*, 13 Lea 228. But the better opinion is to the contrary. *People ex rel. Lawrence v. Fallon*, 152 N. Y. 12. In the principal case, however, chance is easily the dominating element, all opportunity for judgment formed by knowledge or investigation being eliminated by information given in the advertisement.

MASTER AND SERVANT—SAFE MATERIALS—INJURY TO SERVANT—LIABILITY OF MASTER.—TIERNEY V. WUNCK, 88 N. Y. Supp. 612. *Held*, that the fact that a scaffolding had splits in it, and broke when stepped upon was sufficient evidence of the master's neglect to furnish safe materials. Woodward and Jenks, JJ., *dissenting*.

The case comes under a labor law statute but on this point the statute is practically declaratory of the common law. The decision appears to be contrary to the general rule that a master must use ordinary care, only, in furnishing a safe scaffolding. *Austin Mfg. Co. v. Johnson*, 89 Fed. 677; *McLean v. Standard Oil Co.*, 21 N. Y. Supp. 874. Reasonably safe materials are all that are required. There is no need of furnishing the very best. *Rooney v. Sewall, etc., Co.*, 161 Mass. 153; *Bajus v. Syracuse, etc., R. Co.*, 103 N. Y. 312. So, in the present case, as the dissenting opinion says, the plank was, to all appearances, sufficiently strong. And as the injured party himself had put the plank in place he was better able than any one else to know its defects. *Charmon v. Sanford Co.*, 70 Conn. 573. It is, therefore, difficult to see why the master should have been held liable.

NEGLIGENCE—LIABILITY OF OWNER OF PUBLIC RESORT—INDEPENDENT CONTRACTOR.—DEYO V. KINGSTON CONS. R. CO., 88 N. Y. Supp. 487.—While attending an exhibition of fire works at defendant's public amusement resort, to which an admission fee was charged, the plaintiff was injured by a rocket negligently discharged by an independent contractor employed by the defendant to conduct the exhibition. *Held*, that, as the defendant was not guilty of negligence, no liability attached. Houghton, J., *dissenting*.

It has been held that the proprietor of a public amusement resort is liable for any injury resulting from the improper or unsafe construction of a build-

ing or grand stand, notwithstanding their defective condition resulting from the carelessness of a contractor, and from no negligent act or fault whatever of the owner. *Francis v. Cockrell*, L. R. 5 Q. B. 501; *Barrett v. Imp. Co.*, 174 N. Y. 311. There is little tendency to establish the proposition that the same duty that requires an owner to be responsible for the safe condition of the premises also requires him to be equally responsible for the manner in which the exhibition is conducted. Yet a somewhat analogous principle has been sanctioned by the Indiana court, upon the theory that a peculiar relation was created between the parties, and that the owner, having licensed and permitted the exhibition, could not escape liability by an appeal to the independent contractor doctrine. *Conradt v. Clauve*, 93 Ind. 476.

NUISANCE—POLLUTION OF ICE FIELD—INJUNCTION.—AMERICAN ICE CO. v. CATSKILL CEMENT CO., 88 N. Y. Supp. 456.—*Held*, that the plaintiff was entitled to an injunction restraining the defendant during the ice harvesting season from so operating its manufacturing establishment as to cause dust, cinders, and other substances to settle upon plaintiffs' ice fields, thereby rendering the ice unmerchantable.

This case is, undoubtedly, the first one to be found in the reports affording a remedy of this nature in respect to ice fields, concerning which the law has been slow in developing. The destruction of ornamental and useful trees by the gases from a brick kiln is such irreparable injury as a court of equity will enjoin. *Campbell v. Seaman*, 63 N. Y. 568. That case also held that it was immaterial that the injury was not continuous, but only occurred when the wind was in a certain direction. The fact that the defendant was chargeable with no negligence does not affect the case. *Bohan v. Port Jervis G. S. Co.*, 122 N. Y. 18.

STREET RAILWAYS—INJURY TO PASSENGER—RIDING ON PLATFORM.—BRUMNCHON V. RHODE ISLAND CO., 58 Atl. (R. I.) 656. *Held*, that a passenger thrown from the platform of an electric street car on which he is riding, can recover from the company though his riding there contributed to the injury.

It is well settled that any person standing on the platform of steam cars in motion is guilty of contributory negligence if his being there partly caused the injury. *Hickey v. Boston, etc., R. Co.*, 14 Allen 421; *Memphis, etc., R. Co. v. Salinger*, 46 Ark. 528. On the other hand, it is not held, as a rule, that riding on the platform of horse cars is negligent; *Nolan v. Brooklyn R. Co.*, 87 N. Y. 63; even though there are seats inside. *Bruno v. Brooklyn R. Co.*, 5 N. Y. Misc. 327. In regard to electric railways there seems to be no case directly in point. The cases here all turned on the crowded condition of the cars or some similar circumstance which excused the riding on the platform. *Wilde, v. Lynn & Boston, etc., R. Co.*, 163 Mass. 533; *Reber v. Pittsburg, etc. Co.*, 179 Pa. 339. The best course is probably, as in the present case, to leave it to the jury to say whether on the particular car in question the speed was such as to make it negligence to ride on the platform when there is room inside.

WILLS—DESCENT OF BURIAL LOTS—RESIDUARY DEVISE.—IN RE WALDRON ET AL, 58 Atl. 458 (R. I.).—*Held*, that a burial lot is not included under a general residuary clause, but descends to heirs as intestate property.

The ownership of lots in a cemetery is a qualified property, somewhat analogous to an exclusive easement. *Sohier v. Trinity Church*, 109 Mass. 1; *Cemetery v. Buffalo*, 46 N. Y. 503. It is subject to the police power, which may not only prohibit future interments, but may cause the removal of bodies